



ARKANSAS JUDICIARY

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Rule 39. Trial By Jury Or By The Court.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court, upon motion or of its own initiative, finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of this State.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion, upon motion, may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury, the court upon motion or of its own initiative, may try any issue with an advisory jury or, with the consent of all parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Reporter's Notes to Rule 39: - 1. With the exception of minor wording changes in Section (c), Rule 39 is otherwise identical to FRCP 39. The purpose behind this rule is to insure that when a jury trial has been requested, it will be granted on all issues triable by jury unless the parties thereafter affirmatively waive this right. Under Section (b), the trial court retains discretion to grant a trial by jury even though timely request or demand has not been made.

2. Section (c) authorizes the trial court to submit any issue to an advisory jury where it would otherwise not be triable by jury or, with the consent of all parties, may order that the verdict of such jury shall be binding as if the issues were triable by jury as a matter of right. Superseded Ark. Stat. Ann. 27-1705 (Repl. 1962) provided that all issues not triable by jury as a matter of right were to be tried by the court, subject to its power to order any issue to be tried by jury, whether at law or in equity. Thus, the trial courts in this State have previously had the inherent right to submit any issue to a jury. This rule would, however, limit the effect of a jury verdict under Section (c) unless all parties consent to a binding effect.

3. Under the circumstances outlined in Section (c), it is possible to have a binding jury verdict in equity proceedings. This is a change in Arkansas law as jury verdicts in chancery court have heretofore been considered as advisory only and not binding upon the court. *Sullivan v. Wilson Mercantile Co.*, 172 Ark. 914, 290 S.W. 938 (1927); *City of Magnolia v. Davies*, 188 Ark. 19, 64 S.W.2d 85 (1933).

History Text:

History. Amended November 11, 1991, effective January 1, 1992

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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